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Charice Fischer, RDB Development, LLC,  
and Solomon Capital, Inc.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

(SAN JOSE DIVISION)

STEVE TRACHSEL, an individual, SUN CITY TOWERS, LLC, a California corporation, THOMAS CIRRITO, an individual, ATOCHA LAND, LLC, a Delaware limited liability company, MICHAEL CIRRITO, an individual, and CIRRITO HOLDINGS, LLC, a Delaware limited liability company,

Case No. C08-02248 RMW

**ANSWER TO COMPLAINT  
(JURY TRIAL DEMANDED)**

Plaintiffs,  
vs.

RONALD BUCHHOLZ, CHARICE FISCHER, RDB DEVELOPMENT, LLC, a Nevada limited liability company, SOLOMON CAPITAL, INC., a Nevada corporation, JONATHAN VENTO, GRACE CAPITAL, LLC dba GRACE COMMUNITIES, an Arizona limited liability company, DONALD ZELEZNAK, Z-LOFT, INC., an Arizona limited liability company, ZELEZNAK PROPERTY MANAGEMENT, LLC, an Arizona limited liability company, KELLER WILLIAMS REALTY, INC., a Texas corporation, and DOES 1-5, inclusive,

### Defendants.

1                   **DEMAND FOR JURY TRIAL**

2                   Defendants Ronald Buchholz, Charice Fischer, RDB Development, LLC, and Solomon  
3 Capital, Inc. demand a jury trial as provided in Federal Rule of Civil Procedure 38(a).

4                   **ANSWER**

5                   Defendants Ronald Buchholz, Charice Fischer, RDB Development, LLC, and Solomon  
6 Capital, Inc. answer Plaintiffs' Complaint as follows:

7                 1.         Answering paragraph 1, Defendants admit the action purports to state claims for  
8 relief on the theories cited but denies Plaintiffs are entitled to any relief.

9                 2.         Defendants deny the allegations of paragraph 2.

10                3.         Defendants deny the allegations of paragraph 3.

11                4.         Answering paragraph 4, Defendants admit the action purports to state claims for  
12 relief on the theories cited but denies Plaintiffs are entitled to any relief.

13                5.         Answering paragraph 5, Defendants dispute federal subject matter jurisdiction.

14                6.         Answering paragraph 6, Defendants dispute federal subject matter jurisdiction.

15                7.         Answering paragraph 7, Defendants admit venue in this district is proper; thus the  
16 remaining allegations of the paragraph are irrelevant and need not be responded to. If any response  
17 is required, the allegations are denied.

18                8.         Answering paragraph 8, Defendants do not contest personal jurisdiction; thus the  
19 remaining allegations of the paragraph are irrelevant and need not be responded to. If any response  
20 is required, the allegations are denied.

21                9.         Answering paragraph 9, Defendants do not contest personal jurisdiction; thus the  
22 remaining allegations of the paragraph are irrelevant and need not be responded to. If any response  
23 is required, the allegations are denied.

24                10.        Answering paragraph 10, Defendants do not contest personal jurisdiction; thus the  
25 remaining allegations of the paragraph are irrelevant and need not be responded to. If any response  
26 is required, the allegations are denied.

27                11.        Defendants are without knowledge or information sufficient to form a belief as to the  
28 allegations of paragraph 11, and on that basis deny them.

1       12. Defendants are without knowledge or information sufficient to form a belief as to the  
2 allegations of paragraph 12, and on that basis deny them.

3       13. Defendants are without knowledge or information sufficient to form a belief as to the  
4 allegations of paragraph 13, and on that basis deny them.

5       14. Answering paragraph 14, Defendants deny that Plaintiff Trachsel directly invested in  
6 Solomon Towers, LLC. Sun City Towers, LLC, of which Mr. Trachsel is the manager, was the  
7 investor. Defendants are without knowledge or information sufficient to form a belief as to the  
8 remaining allegations of the paragraph, and on that basis deny them.

9       15. Answering paragraph 15, Defendants admit Sun City Towers, LLC invested in  
10 Solomon Towers, LLC. Defendants are without knowledge or information sufficient to form a  
11 belief as to the remaining allegations of the paragraph, and on that basis deny them.

12       16. Answering paragraph 16, Defendants deny that Plaintiff Thomas Cirrito directly  
13 invested in Solomon Towers, LLC. Atocha Land, LLC, of which Thomas Cirrito is the manager,  
14 was the investor. Defendants are without knowledge or information sufficient to form a belief as to  
15 the remaining allegations of the paragraph, and on that basis deny them.

16       17. Answering paragraph 17, Defendants admit Atocha Land, LLC invested in Solomon  
17 Towers, LLC. Defendants are without knowledge or information sufficient to form a belief as to  
18 the remaining allegations of the paragraph, and on that basis deny them.

19       18. Answering paragraph 18, Defendants deny that Plaintiff Michael Cirrito directly  
20 invested in Solomon Towers, LLC. Cirrito Holdings, LLC, of which Michael Cirrito is the  
21 manager, was the investor. Defendants are without knowledge or information sufficient to form a  
22 belief as to the remaining allegations of the paragraph, and on that basis deny them.

23       19. Answering paragraph 19, Defendants admit Cirrito Holdings, LLC invested in  
24 Solomon Towers, LLC. Defendants are without knowledge or information sufficient to form a  
25 belief as to the remaining allegations of the paragraph, and on that basis deny them.

26       20. Defendants deny the allegations of paragraph 20 except admit Solomon Capital,  
27 Inc.'s maintains an office in San Jose, California.

1       21. Answering paragraph 21, Defendants admit that Defendant Ronald Buchholz is a  
2 resident of the state of Nevada.

3       22. Answering paragraph 22, Defendants admit that Defendant Charice Fischer is a  
4 resident of the state of Nevada.

5       23. Defendants are without knowledge or information sufficient to form a belief as to the  
6 allegations of paragraph 23, and on that basis deny them.

7       24. Defendants are without knowledge or information sufficient to form a belief as to the  
8 allegations of paragraph 24 and on that basis deny them.

9       25. Defendants are without knowledge or information sufficient to form a belief as to the  
10 allegations of the first sentence of paragraph 25, and on that basis deny them. Defendants deny the  
11 remaining allegations of the paragraph.

12       26. Defendants are without knowledge or information sufficient to form a belief as to the  
13 allegations of the first sentence of paragraph 26, and on that basis deny them. Defendants deny the  
14 remaining allegations of the paragraph.

15       27. Defendants are without knowledge or information sufficient to form a belief as to the  
16 allegations of the first sentence of paragraph 27, and on that basis deny them. Defendants deny the  
17 remaining allegations of the paragraph.

18       28. Defendants admit the allegations of the first sentence of paragraph 28. Defendants  
19 deny the remaining allegations of the paragraph.

20       29. Defendants are without knowledge or information sufficient to form a belief as to the  
21 allegations of the first sentence of paragraph 29, and on that basis deny them. Defendants deny the  
22 remaining allegations of the paragraph.

23       30. Defendants are without knowledge or information sufficient to form a belief as to the  
24 allegations of paragraph 30 and on that basis deny them.

25       31. Defendants admit the allegations of paragraph 31.

26       32. Defendants admit the allegations of paragraph 32.

27       33. Answering paragraph 33, Defendants admit that Equity Enterprises, Inc. is the  
28 predecessor to Solomon Capital, Inc and that Ronald Buchholz was the President of both entities.

1 Defendants are uncertain what Plaintiffs mean by the phrase “associated with” in the first sentence  
2 of the paragraph and therefore deny that allegation on information and belief. Defendants deny the  
3 remaining allegations of the paragraph.

4 34. Defendants admit the allegations of paragraph 34 but deny that any investors in  
5 Solomon Towers, LLC were “met through their relationship with the Church.”

6 35. Defendants deny the allegations of paragraph 35.

7 36. Answering paragraph 36, Defendants admit Plaintiffs have invested in other real  
8 estate investment opportunities offered through Defendants Ronald Buchholz and Charice Fischer.  
9 Defendants do not understand the second sentence of the paragraph and therefore denies the  
10 allegations there on information and belief.

11 37. Answering paragraph 37, Defendants deny that Defendants Charice Fischer and  
12 Solomon Capital, Inc. received Developer Fees. Defendants do not understand, and Plaintiffs do  
13 not explain, what is meant by the phrase “each alleged investment,” and therefore denies the  
14 remaining allegations of the paragraph on information and belief.

15 38. Defendants deny the allegations of paragraph 38.

16 39. Answering paragraph 39, Defendants deny that Defendants Charice Fischer and  
17 Solomon Capital, Inc. received Developer Fees. Defendants further deny that any Developer  
18 Fees—which were disclosed to the investors—operated “to the detriment” of the investors.

19 40. Defendants deny the allegations of paragraph 40.

20 41. Defendants deny the allegations of paragraph 41.

21 42. Defendants deny the allegations of paragraph 42.

22 43. Defendants deny the allegations of paragraph 43.

23 44. Defendants admit the allegations of paragraph 44.

24 45. Answering paragraph 45, Defendants admit no Private Placement Memorandum was  
25 created but deny that the information concerning the project was limited to the Power Point  
26 presentation and the pro forma.

27 46. Answering paragraph 46, Defendants deny Zeleznak attended the February 3, 2005  
28 meeting where the Solomon Towers, LLC opportunity was discussed. Defendants admit that

1 several months after Solomon Towers, LLC was formed, Zeleznak attended a meeting of investors  
2 unrelated to Solomon Towers, LLC.

3 47. Defendants admit the allegations of paragraph 47.

4 48. Defendants admit the allegations of paragraph 48 but deny that Defendant Solomon  
5 Capital, Inc. was a “manager” or was otherwise involved in Solomon Towers, LLC.

6 49. The allegations of paragraph 49 contain legal conclusions that Defendants are not  
7 required to admit or deny. If any response is required, the allegations are denied.

8 50. Defendants deny the allegations of paragraph 50.

9 51. Defendants deny the allegations of paragraph 51.

10 52. Defendants deny the allegations of paragraph 52.

11 53. Answering paragraph 53, Defendants do not understand, and Plaintiffs do not  
12 explain, what is meant by the phrase “additional investors or members” or “their ostensible  
13 ‘partners,’” and therefore deny the allegations of the paragraph on information and belief. The  
14 Operating Agreement of Solomon Towers, LLC restricts the admission of new members and  
15 requires member vote and approval of joint ventures.

16 54. Answering paragraph 54, Defendants deny that Defendant Solomon Capital, Inc. was  
17 a “manager” or was otherwise involved in Solomon Towers, LLC. Defendants deny the remaining  
18 allegations of the paragraph.

19 55. Defendants are without knowledge or information sufficient to form a belief as to the  
20 allegations of paragraph 55, and on that basis deny them.

21 56. Defendants are without knowledge or information sufficient to form a belief as to the  
22 allegations of paragraph 56, and on that basis deny them.

23 57. Answering paragraph 57, Defendants admit Solomon Towers, LLC purchased the  
24 property from Z Lofts LLC for approximately the amount stated and that the sale closed on April  
25 11, 2005. Defendants deny the remaining allegations of the paragraph.

26 58. Defendants deny the allegations of paragraph 58.

27 59. Defendants deny the allegations of paragraph 59.

1       60. Defendants deny the allegations of paragraph 60 but admit that Exhibit D is a true  
2 and correct copy of the HUD-1 closing statement.

3       61. Defendants deny the allegations of paragraph 61.

4       62. Defendants deny the allegations of paragraph 62.

5       63. Answering paragraph 63, Defendants deny that Defendants Charice Fischer and  
6 Solomon Capital, Inc. received Developer Fees. Defendants further deny that any Developer  
7 Fees—which were disclosed to the investors—operated “to the detriment” of the investors.  
8 Defendants admit that there was to be a sharing of profits from ultimate sales of condominiums.  
9 Defendants deny the remaining allegations of the paragraph.

10      64. Defendants deny the allegations of paragraph 64.

11      65. Answering paragraph 65, Defendants deny any fraud, Enterprise, or attempts to  
12 disguise any actions.

13      66. Defendants deny the allegations of paragraph 66.

14      67. Answering paragraph 67, Defendants deny that “the Property was not worth the  
15 amount that would be paid” and also deny that the dollar per square footage figures represent  
16 comparable properties or investments.

17      68. Defendants deny the allegations of paragraph 68.

18      69. Answering paragraph 69, Defendants fully disclosed the relationships of the parties  
19 to the sale and further disclosed the \$1 million fee.

20      70. Defendants deny the allegations of paragraph 70.

21      71. Answering paragraph 71, Defendants deny that any representations were made that  
22 capital calls would not be required. The Operating Agreement specifically mentions the possibility  
23 of additional funding.

24      72. Answering paragraph 72, Defendants deny any material misrepresentations,  
25 including any concerning the size of the project.

26      73. Answering paragraph 73, Defendants deny any material misrepresentations,  
27 including any concerning profitability. The investors were told they would receive 50% of any  
28

1 profits that the project paid. Defendants further deny the characterization of the February 2008 pro  
2 forma as stated in the last sentence of the paragraph.

3       74. Answering paragraph 74, Defendants deny any representations were made of present  
4 zoning for 15 stories. The 15-story alternative was presented to show the potential financial effect  
5 by changing the height.

6       75. Answering paragraph 75, Defendants deny any material misrepresentations,  
7 including any concerning timing. Defendants admit that project construction has not begun.

8       76. Answering paragraph 76, Defendants deny any material misrepresentations,  
9 including any concerning viability. Defendants further deny the allegations of the last two  
10 sentences of the paragraph.

11      77. Defendants deny the allegations of paragraph 77.

12      78. Defendants deny the allegations of paragraph 78.

13      79. Defendants deny the allegations of paragraph 79.

14       80. Answering paragraph 80, Defendants deny any material misrepresentations,  
15 including any concerning viability. Defendants further deny the allegations of the last two  
16 sentences of the paragraph.

17       81. Defendants are without knowledge or information sufficient to form a belief as to the  
18 allegations of paragraph 81, and on that basis deny them.

19       82. Defendants are without knowledge or information sufficient to form a belief as to the  
20 allegations of paragraph 82, and on that basis deny them.

21       83. Answering paragraph 83, Defendants deny that “the contents of the offices” were  
22 seized, but admit that file information was taken.

23       84. Defendants neither admit nor deny the allegations of paragraph 84, as they are not  
24 allegations to which responsive pleading is required.

25       85. The allegations of paragraph 85 contain legal conclusions that Defendants are not  
26 required to admit or deny. If any response is required, the allegations are denied.

27      86. Defendants deny the allegations of paragraph 86.

28      87. Defendants deny the allegations of paragraph 87.

- 1       88. Defendants deny the allegations of paragraph 88.
- 2       89. Defendants deny the allegations of paragraph 89.
- 3       90. Defendants deny the allegations of paragraph 90.
- 4       91. Defendants deny the allegations of paragraph 91.
- 5       92. Defendants deny the allegations of paragraph 92.
- 6       93. Defendants deny the allegations of paragraph 93.
- 7       94. Defendants deny the allegations of paragraph 94.
- 8       95. Defendants deny the allegations of paragraph 95.
- 9       96. Defendants deny the allegations of paragraph 96.
- 10      97. Defendants deny the allegations of paragraph 97.
- 11      98. Defendants deny the allegations of paragraph 98.
- 12      99. Defendants deny the allegations of paragraph 99.
- 13      100. Defendants deny the allegations of paragraph 100.
- 14      101. Defendants deny the allegations of paragraph 101.
- 15      102. Defendants deny the allegations of paragraph 102.
- 16      103. Defendants deny the allegations of paragraph 103.
- 17      104. Defendants neither admit nor deny the allegations of paragraph 104, as they are not  
18 allegations to which responsive pleading is required.
- 19      105. Defendants deny the allegations of paragraph 105.
- 20      106. Defendants deny the allegations of paragraph 106.
- 21      107. Defendants deny the allegations of paragraph 107
- 22      108. Defendants deny the allegations of paragraph 108
- 23      109. Defendants deny the allegations of paragraph 109.
- 24      110. Defendants neither admit nor deny the allegations of paragraph 110, as they are not  
25 allegations to which responsive pleading is required.
- 26      111. Defendants deny the allegations of paragraph 111.
- 27      112. Defendants deny the allegations of paragraph 112.
- 28      113. Defendants deny the allegations of paragraph 113.

1       114. Answering paragraph 114, Defendants contend the purchase price was fair market  
2 value. Defendants deny the remaining allegations of the paragraph.

3       115. Defendants deny the allegations of paragraph 115.

4       116. Defendants deny the allegations of paragraph 116.

5       117. Defendants neither admit nor deny the allegations of paragraph 117, as they are not  
6 allegations to which responsive pleading is required.

7       118. Defendants deny the allegations of paragraph 118.

8       119. Defendants deny the allegations of paragraph 119.

9       120. Defendants deny the allegations of paragraph 120.

10      121. Defendants deny the allegations of paragraph 121.

11      122. Defendants neither admit nor deny the allegations of paragraph 122, as they are not  
12 allegations to which responsive pleading is required.

13      123. Defendants deny the allegations of paragraph 123.

14      124. Defendants deny the allegations of paragraph 124.

15      125. Defendants deny the allegations of paragraph 125.

16      126. Defendants neither admit nor deny the allegations of paragraph 126, as they are not  
17 allegations to which responsive pleading is required.

18      127. Defendants deny the allegations of paragraph 127.

19      128. Answering paragraph 128, Defendants contend the purchase price was fair market  
20 value. Defendants deny the remaining allegations of the paragraph.

21      129. Answering paragraph 129, Defendants admit Plaintiffs seek the relief requested but  
22 deny they are entitled to it.

23      130. Answering paragraph 130, Defendants admit Plaintiffs seek the relief requested but  
24 deny they are entitled to it.

25      131. Defendants neither admit nor deny the allegations of paragraph 131, as they are not  
26 allegations to which responsive pleading is required.

27      132. Defendants deny the allegations of paragraph 132.

28      133. Defendants deny the allegations of paragraph 133.

1       134. Defendants deny the allegations of paragraph 134.

2       135. Defendants deny the allegations of paragraph 135.

3       136. Defendants neither admit nor deny the allegations of paragraph 136, as they are not  
4 allegations to which responsive pleading is required.

5       137. Defendants deny the allegations of paragraph 137. None of these answering  
6 Defendants were parties to the Operating Agreement, and only three of the six Plaintiffs were.

7       138. Defendants admit the allegations of paragraph 138 but deny that Defendant Solomon  
8 Capital, Inc. was a “manager” or was otherwise involved in Solomon Towers, LLC.

9       139. Defendants deny the allegations of paragraph 139.

10      140. Defendants deny the allegations of paragraph 140.

11      141. Defendants deny the allegations of paragraph 141.

12      142. Defendants neither admit nor deny the allegations of paragraph 142, as they are not  
13 allegations to which responsive pleading is required.

14      143. Answering paragraph 143, Defendants contend the purchase price was fair market  
15 value. Defendants deny the remaining allegations of the paragraph.

16      144. Defendants deny the allegations of paragraph 144.

17      145. Defendants deny the allegations of paragraph 145.

18      146. Defendants deny the allegations of paragraph 146.

19      147. Defendants deny the allegations of paragraph 147.

20      148. Defendants deny the allegations of paragraph 148.

21      149. Defendants neither admit nor deny the allegations of paragraph 149, as they are not  
22 allegations to which responsive pleading is required.

23      150. Answering paragraph 150, Defendants contend the purchase price was fair market  
24 value. Defendants deny the remaining allegations of the paragraph.

25      151. Defendants deny the allegations of paragraph 151.

26      152. Defendants deny the allegations of paragraph 152.

27      153. Defendants deny the allegations of paragraph 153.

28      154. Defendants deny the allegations of paragraph 154.

1       155. Defendants neither admit nor deny the allegations of paragraph 155, as they are not  
2 allegations to which responsive pleading is required.

3       156. Defendants deny the allegations of paragraph 156.

4       157. Defendants deny the allegations of paragraph 157.

5       158. Defendants deny the allegations of paragraph 158.

6       159. Defendants deny the allegations of paragraph 159.

7       160. Defendants deny the allegations of paragraph 160.

8       161. Defendants deny the allegations of paragraph 161.

9       162. Answering paragraph 162, Defendants deny any conspiracy, deny Plaintiffs were not  
10 sophisticated investors, and deny any concealment.

11      163. Defendants deny the allegations of paragraph 163.

12      164. Defendants deny the allegations of paragraph 164.

13      165. Defendants neither admit nor deny the allegations of paragraph 165, as they are not  
14 allegations to which responsive pleading is required.

15      166. Defendants deny the allegations of paragraph 166.

16      167. Defendants deny the allegations of paragraph 167.

17      168. Answering paragraph 168, Defendants admit Plaintiffs seek the relief requested but  
18 deny they are entitled to it.

19      169. Defendants neither admit nor deny the allegations of paragraph 169, as they are not  
20 allegations to which responsive pleading is required.

21      170. Defendants deny the allegations of paragraph 170.

22      171. Defendants deny the allegations of paragraph 171.

23      172. Defendants deny the allegations of paragraph 172.

24      173. Defendants deny the allegations of paragraph 173.

25      174. Defendants deny the allegations of paragraph 174.

26      175. Defendants deny the allegations of paragraph 175.

27      176. Defendants neither admit nor deny the allegations of paragraph 176, as they are not  
28 allegations to which responsive pleading is required.

1       177. Defendants deny the allegations of paragraph 177.

2       178. Defendants deny the allegations of paragraph 178.

3       179. Answering paragraph 179, Defendants deny any false or misleading representations.

4       180. Answering paragraph 180, Defendants deny any misrepresentations or omissions of  
5 material fact.

6       181. Defendants deny the allegations of paragraph 181.

7       182. Defendants neither admit nor deny the allegations of paragraph 182, as they are not  
8 allegations to which responsive pleading is required.

9       183. Answering paragraph 183, Defendants admit that in February 2005, Ronald  
10 Buchholz, with assistance from Charice Fischer, made a presentation to a limited group of potential  
11 investors of an opportunity to form a limited liability company to buy real estate in Phoenix and  
12 develop it into a residential high rise property; also that the presentation included the Power Point  
13 and pro forma financials attached to the Complaint as Exhibits A and B; also that the limited  
14 liability company was formed; and also that \$5,010,000 was raised to purchase the property.

15 Defendants deny the remaining allegations of the paragraph.

16       184. Defendants deny the allegations of paragraph 184.

17       185. Answering paragraph 185, Defendants deny that "the Property was not worth the  
18 amount that would be paid" and also deny that the dollar per square footage figures represent  
19 comparable properties or investments.

20       186. Defendants deny the allegations of paragraph 186.

21       187. Answering paragraph 187, Defendants fully disclosed the relationships of the parties  
22 to the sale and further disclosed the \$1 million fee.

23       188. Defendants deny the allegations of paragraph 188.

24       189. Answering paragraph 189, Defendants deny that any representations were made that  
25 capital calls would not be required. The Operating Agreement specifically mentions the possibility  
26 of additional funding.

27       190. Answering paragraph 190, Defendants deny any material misrepresentations,  
28 including any concerning the size of the project.

1       191. Answering paragraph 191, Defendants deny any material misrepresentations,  
2 including any concerning profitability. The investors were told they would receive 50% of any  
3 profits that the project paid. Defendants further deny the characterization of the February 2008 pro  
4 forma as stated in the last sentence of the paragraph.

5       192. Answering paragraph 192, Defendants deny any representations were made of  
6 present zoning for 15 stories. The 15-story alternative was presented to show the potential financial  
7 effect by changing the height.

8       193. Answering paragraph 193, Defendants deny any material misrepresentations,  
9 including any concerning timing. Defendants admit that project construction has not begun.

10      194. Answering paragraph 194, Defendants deny any material misrepresentations,  
11 including any concerning viability. Defendants further deny the allegations of the last two  
12 sentences of the paragraph.

13      195. Defendants deny the allegations of paragraph 195.

14      196. Defendants are without knowledge or information sufficient to form a belief as to the  
15 allegations of paragraph 196, and on that basis deny them.

16      197. Answering paragraph 197, Defendants admit Plaintiffs seek the relief requested but  
17 deny they are entitled to it.

18      198. Defendants neither admit nor deny the allegations of paragraph 198, as they are not  
19 allegations to which responsive pleading is required.

20      199. Defendants deny the allegations of paragraph 199.

21      200. Answering paragraph 200, Defendants admit that Defendants had prior investment  
22 dealings with Defendants Vento and Zeleznak. Defendants deny the remaining allegations of the  
23 paragraph.

24      201. Defendants are without knowledge or information sufficient to form a belief as to the  
25 allegations of paragraph 201, and on that basis deny them.

26      202. Answering paragraph 202, Defendants admit Solomon Towers, LLC purchased the  
27 property from Z Lofts LLC for approximately the amount stated and that the sale closed on April  
28 11, 2005. Defendants deny the remaining allegations of the paragraph.

1       203. Defendants deny the allegations of paragraph 203.

2       204. Defendants deny the allegations of paragraph 204.

3       205. Defendants neither admit nor deny the allegations of paragraph 205, as they are not  
4 allegations to which responsive pleading is required.

5       206. Defendants deny the allegations of paragraph 206 except admit that Exhibit C to the  
6 Complaint is a true and correct copy of the Operating Agreement of Solomon Towers, LLC. As  
7 shown in that agreement, the seller of membership interests was Solomon Towers, LLC.

8       207. Defendants deny the allegations of paragraph 207. The transaction was exempt from  
9 registration.

10      208. Answering paragraph 208, Defendants admit that all monies received by investors  
11 and noteholders was used to purchase the underling property. Defendants deny the remaining  
12 allegations of the paragraph.

13      209. Defendants deny the allegations of paragraph 209.

14      210. Defendants neither admit nor deny the allegations of paragraph 210, as they are not  
15 allegations to which responsive pleading is required.

16      211. Defendants deny the allegations of paragraph 211.

17      212. Answering paragraph 212, Defendants admit that Defendants had prior investment  
18 dealings with Defendants Vento and Zeleznak. Defendants deny the remaining allegations of the  
19 paragraph.

20      213. Defendants are without knowledge or information sufficient to form a belief as to the  
21 allegations of paragraph 213, and on that basis deny them.

22      214. Answering paragraph 214, Defendants admit Solomon Towers, LLC purchased the  
23 property from Z Lofts LLC for approximately the amount stated and that the sale closed on April  
24 11, 2005. Defendants deny the remaining allegations of the paragraph.

25      215. Defendants deny the allegations of paragraph 215.

26      216. Defendants deny the allegations of paragraph 216.

1                   **AFFIRMATIVE DEFENSES**

2                   As separate affirmative defenses to Plaintiffs' Complaint, Defendants allege as follows:

3                   **First Affirmative Defense: Failure to State a Claim**

4                   Plaintiffs' Complaint fails to set forth facts sufficient to state a claim upon which relief may  
5                   be granted.

6                   **Second Affirmative Defense: Statute of Limitations**

7                   Each of Plaintiffs' claims for relief are timed-barred by the statutes of limitations  
8                   applicable to those claims.

9                   **Third Affirmative Defense: Unclean Hands**

10                  Plaintiffs' Complaint is barred by the doctrine of unclean hands.

11                  **Fourth Affirmative Defense: *In Pari Delicto***

12                  Plaintiffs' Complaint is barred to the extent Plaintiffs' culpability was greater than  
13                  Defendants' culpability, if any, in causing the harm allegedly suffered.

14                  **Fifth Affirmative Defense: Laches**

15                  Plaintiffs' Complaint is barred by the doctrine of laches.

16                  **Sixth Affirmative Defense: Estoppel**

17                  Plaintiffs' Complaint is barred by the doctrine of estoppel.

18                  **Seventh Affirmative Defense: Waiver**

19                  Plaintiffs' Complaint is barred by the doctrine of waiver.

20                  **Eighth Affirmative Defense: Unjust Enrichment**

21                  Any recovery by Plaintiffs would result in unjust enrichment and should be disallowed.

22                  **Ninth Affirmative Defense: Discharge of Obligations**

23                  Plaintiffs' Complaint is barred because Defendants have complied with and fully performed  
24                  all past and current obligations imposed upon it by law, contracts, or equity, and all past and current  
25                  obligations owed to Plaintiffs have been satisfied, released, or otherwise discharged.

26                  **Tenth Affirmative Defense: Release**

27                  Plaintiffs' Complaint is barred, in whole or in part, by the exculpatory clauses of the  
28                  underlying agreement.

#### **Eleventh Affirmative Defense: Consent**

Plaintiffs' Complaint is barred because Plaintiffs consented to the acts forming the basis of Plaintiffs' allegations with actual and/or constructive knowledge of their rights and without obligation or undue influence.

### **Twelfth Affirmative Defense: No Legal Duty**

Plaintiffs' Complaint is barred, in whole or in part, because Defendants did not owe a legal duty to Plaintiffs, or if Defendants owed a legal duty, that duty was not breached.

## **Thirteenth Affirmative Defense: Failure To Mitigate**

Plaintiffs' Complaint is barred, in whole or in part, to the extent Plaintiffs have failed to mitigate their damages, if any.

#### **Fourteenth Affirmative Defense: Superseding Causes**

If Plaintiffs have sustained any damage or loss, such damage or loss was the result of intervening or superseding events, factors, occurrences or conditions that were in no way caused by Defendants, and for which Defendants are not responsible and/or liable.

### **Fifteenth Affirmative Defense: Good Faith**

Plaintiffs' Complaint is barred because the alleged conduct of Defendants was not unfair and was undertaken in good faith for a valid business purpose.

### **Sixteenth Affirmative Defense: Negligence**

If Plaintiffs have sustained any damage or loss, such damage or loss was the result of Plaintiffs' own negligence or lack of due care.

## **Seventeenth Affirmative Defense: Privileged Conduct**

Plaintiffs' Complaint is barred to the extent Defendants' conduct was privileged, lawful, and/or permitted.

## **Eighteenth Affirmative Defense: Justification**

Plaintiffs' Complaint is barred because any act or omission of Defendants was justified.

## **Nineteenth Affirmative Defense: Plaintiffs' Failure of Performance**

Defendants' performance of obligations due under the underlying agreement is excused by Plaintiffs' prior and/or continuing breach and failure of performance under the agreement.

1                   **Twentieth Affirmative Defense: Failure To Join Necessary and Indispensible Parties**

2                   Plaintiffs' Complaint is barred because Plaintiffs have failed to join Solomon Towers, LLC  
3 and its members and noteholders, who are necessary and indispensable parties to any relief sought.

4                   **Twenty-First Affirmative Defense: Exempted Security**

5                   Plaintiffs' Complaint is barred because the sale of interests in Solomon Towers, LLC was  
6 exempted from the registration and reporting requirements of the federal and state securities laws.

7                   **Twenty-Second Affirmative Defense: Lack of Privity**

8                   Plaintiffs' Complaint is barred because there was no privity of contract between Plaintiffs  
9 and Defendants on the transaction that is the subject of this litigation.

10                  **Twenty-Third Affirmative Defense: Reckless Behavior**

11                  Plaintiffs' Complaint is barred because Plaintiffs' own reckless conduct caused or  
12 contributed to any injury sustained.

13                  **Twenty-Fourth Affirmative Defense: Election of Remedies**

14                  Plaintiffs' Complaint is barred to the extent Plaintiffs have pursued inconsistent remedies  
15 and have as a matter of law made an election of remedies.

16                  **Reservation of Defenses**

17                  Defendants reserve the right to raise additional defenses and to supplement those raised here  
18 in the event discovery or further investigation indicates that asserting additional defenses is  
19 warranted.

20                  THEREFORE, Defendants pray that Plaintiffs take nothing by the Complaint, that the  
21 Complaint be dismissed, that judgment be entered for Defendants, and that Defendants be awarded  
22 costs of suit, attorneys' fees, and any other proper relief.

23                  Dated: July 21, 2008.

Pinnacle Law Group, LLP

25                  By: /s/ William W. Schofield

26                  William W. Schofield

27                  Attorneys for Defendants Ronald Buchholz,  
28                  Charice Fischer, RDB Development, LLC,  
                       and Solomon Capital, Inc.

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Charice Fischer, RDB Development, LLC,  
and Solomon Capital, Inc.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

(SAN JOSE DIVISION)

STEVE TRACHSEL, et al.,

Case No. C08-02248 RMW

10

**Plaintiffs,**

RONALD BUCHHOLZ, et al..

## Defendants.

## CERTIFICATE OF SERVICE

## PROOF OF SERVICE

I am employed in the office of a member of the bar of this Court in the City and County of San Francisco, at whose direction this service was made. I am over the age of 18 and not a party to the within action. My business address is 425 California Street, Suite 1800, San Francisco, California 94104.

On July 21, 2008, I served true and correct copies of the document described as:

## ANSWER TO COMPLAINT

on the interested parties in this action addressed as follows [ ] (see attached list):

Jesshill E. Love  
[jlove@ropers.com](mailto:jlove@ropers.com)  
[mmcpherson@ropers.com](mailto:mmcpherson@ropers.com),  
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1 Michael George Descalso  
2 [mgd@greenchauvel.com](mailto:mgd@greenchauvel.com)

3 [X] BY E-MAIL: Service was accomplished through the Notice of Electronic Filing for parties  
4 and counsel who are registered ECF Users.

5 I declare under penalty of perjury under the laws of the United States of America that the  
6 foregoing is true and correct. Executed on July 21, 2008, at San Francisco, California.

7 \_\_\_\_\_  
8 /s/ Shauna Hardeman  
9 SHAUNA HARDEMAN

10 Hon. Hon. Ronald M. Whyte  
11 United States Bankruptcy Court  
12 Courtroom 6, 4th Floor  
13 280 South 1st Street  
14 San Jose, CA 95113

15 **Attention: CHAMBERS COPIES**

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